

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**HOMER CHEESE AND
TANIKKA CHEESE**

VS.

**GEICO INDEMNITY COMPANY and
GEICO COUNTY MUTUAL
INSURANCE COMPANY**

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**C.A. NO. 4:17-cv-02120
(JURY)**

AGREED MOTION TO REMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs **HOMER CHEESE and TANIKKA CHEESE** and Defendants **GEICO INDEMNITY COMPANY and GEICO COUNTY MUTUAL INSURANCE COMPANY** file this Agreed Motion to Remand under 28 U.S.C. §1447(c). The Parties ask the Court to remand this case to the 157th Judicial District Court of Harris County, Texas (i.e., the state court in which this case was pending at the time of removal) upon Plaintiffs' recent amended complaint adding GEICO County Mutual Insurance Company as a defendant to the suit. GEICO County Mutual Insurance Company is a domestic insurance company with its principal place of business in Texas. In this regard, the Parties agree that this Court now lacks subject matter jurisdiction in that there is no longer complete diversity between Plaintiffs and Defendants and that Plaintiffs' claims do not involve a federal question.

NATURE OF THE SUIT

1. This case involves an uninsured/underinsured claim stemming from an alleged accident that occurred on or about June 27, 2015. On that day, Plaintiff Homer Cheese was operating a rental vehicle with Plaintiff Tanikka Cheese and their three children riding as passengers when they were rear-ended by another vehicle. As a result of damages which Plaintiffs allege they sustained

from the accident, Plaintiffs seek uninsured/underinsured motorist benefits from Defendants, both of which insured Plaintiffs at the time of the accident. Plaintiffs seek contractual damages for medical expenses, lost wages, pain and suffering, mental anguish, and impairment. Plaintiffs additionally seek extra-contractual damages for violations of the Texas Insurance Code and breach of the implied duty of good faith and fair dealing.¹ Among other damages, Plaintiffs seek to recover attorney's fees, statutory interest, and exemplary damages.

PROCEDURAL BACKGROUND

2. This lawsuit began on or about May 3, 2017 when Plaintiffs filed their Original Petition in Cause No. 2017-29914 in the 157th Judicial District Court of Harris County, Texas, styled *Homer Cheese and Tanikka Cheese v. GEICO Indemnity Company*. GEICO Indemnity Company timely filed an answer in state court and subsequently timely removed the state court action pursuant to 28 U.S.C. §1446 on the basis that there was complete diversity between the parties and that the amount in controversy exceeded \$75,000, exclusive of interests and costs. (Doc. 1).

3. Upon learning of the existence of coverage allegedly afforded to Plaintiffs by GEICO County Mutual Insurance Company, Plaintiffs filed an amended complaint to add GEICO County Mutual Insurance Company as a defendant to the suit. (Doc. 11). Plaintiffs' claims against GEICO County Mutual Insurance Company are the same as those made against GEICO Indemnity Company.² GEICO County Mutual Insurance Company is not opposed to Plaintiffs' amendment, and undersigned counsel has agreed to accept service on behalf of GEICO County Mutual Insurance Company.

4. With the addition of GEICO County Mutual Insurance Company as a defendant to the suit, the Parties agree that this Court is now without subject matter jurisdiction over the case.

¹ Plaintiffs have agreed to sever/abate the extra-contractual claims against GEICO Indemnity Company.

² Plaintiffs have also agreed to sever/abate the extra-contractual claims against GEICO County Mutual Insurance Company.

ARGUMENT

5. The Court may remand a cause at any time before the rendering of a final judgment due to lack of subject matter jurisdiction under 28 U.S.C. §1447(c). Where there is no subject matter jurisdiction, remand is mandatory.

6. Accordingly, the Court should remand this case to state court because there is no longer complete diversity between Plaintiffs and Defendants and because Plaintiffs' claims do not involve a federal question.

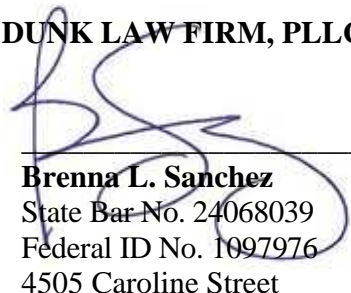
CONCLUSION AND PRAYER

Based on the foregoing, the Parties ask this Court to grant the Agreed Motion to Remand and enter an order remanding this case to the 157th Judicial District of Harris County, Texas. The Parties further request such other and further relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Counsel who are not Filing Users are receiving a true and accurate copy of the foregoing served via United States mail, first-class, postage pre-paid on this 18th day of December, 2017.



GREGORY M. HOWARD